



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 14 2015

Via First Class Mail and Facsimile (877) 437-5755

Chris K. Gober, Esq.
Gober Hilgers PLLC
2101 Cedar Springs Road
Dallas, TX 75201

Re: MUR 6753
GOAL WestPAC and Phillip Pearce
in his official capacity as treasurer

Dear Mr. Gober:

On September 3, 2013, the Federal Election Commission ("Commission") notified your clients, GOAL WestPAC and Phillip Pearce in his official capacity as treasurer (the "Committee"), that it received a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission exercised its prosecutorial discretion to dismiss the matter and close the file on August 11, 2015. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009).

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler", written over a horizontal line.

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS:** Representative Stevan E. Pearce,
6 People for Pearce and James Francis,
7 in his official capacity as Treasurer
8 GOAL WestPAC and Philip G. Pearce,
9 in his official capacity as Treasurer
10

MUR: 6753

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13 **I. INTRODUCTION**

14 This matter involves allegations that Representative Stevan E. Pearce of New Mexico's
15 Second Congressional District and his principal campaign committee, People for Pearce and
16 James Francis in his official capacity as treasurer ("the Pearce Committee"), violated the Federal
17 Election Campaign Act of 1971, as amended ("the Act"),¹ when they directly or indirectly
18 "established, financed, maintained or controlled" WestPAC, an independent-expenditure-only
19 political committee,² which allegedly raised and spent money obtained outside federal limitations
20 and source prohibitions. The Commission exercises its prosecutorial discretion to dismiss this
21 matter because further enforcement action would not be an efficient use of the Commission's
22 resources.³

23 **II. FACTS**

24 Representative Stevan E. Pearce is a member of the U.S. House of Representatives from
25 New Mexico's Second Congressional District and was a candidate for reelection in 2013.

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, was transferred from Title 2 to new Title 52 of the United States Code.

² As used in this Report, "WestPAC" refers to Respondent GOAL WestPAC and Philip G. Pearce in his official capacity as Treasurer, collectively.

³ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 Representative Pearce's brother, Philip G. Pearce, serves as a bookkeeper for the Pearce
2 Committee.⁴ Dan Hazelwood served as a general consultant to the Pearce Committee.⁵

3 Jason Heffley founded WestPAC on January 9, 2013.⁶ On January 28, 2013, WestPAC
4 filed its Statement of Organization with the Commission identifying itself as an independent
5 expenditure-only political committee.⁷ Heffley previously served as Pearce's deputy chief of
6 staff and campaign manager.⁸ Phillip Pearce (Representative Pearce's brother) is WestPAC's
7 Treasurer, in addition to his service as the Pearce Committee's bookkeeper.⁹

8 The Complaint alleges that, while a candidate for reelection, Representative Pearce
9 caused the Pearce Committee to contribute \$10,000 to WestPAC in January 2013.¹⁰ It notes that
10 these funds constituted two-thirds of the \$15,000 that WestPAC received during its first six
11 months, suggesting that Heffley used the Pearce Committee's contribution to establish and
12 finance WestPAC during its first months of operation.¹¹ The Complaint alleges that Heffley and
13 Philip Pearce both held positions with the Pearce Committee and WestPAC and that the Pearce
14 Committee and WestPAC share adjacent post office boxes in Hobbs, New Mexico.¹² Based on
15 these allegations, the Complaint asserts that Pearce and the Pearce Committee may have violated

⁴ Committee Resp. at 2 (Oct. 25, 2013).

⁵ *Id.*

⁶ *Id.* (Heffley founded WestPAC); WestPAC Resp. at 2 (Oct. 18, 2013) (WestPAC was established on January 9, 2013).

⁷ WestPAC Statement of Organization (Jan. 28, 2013).

⁸ WestPAC Resp. at 4.

⁹ *Id.*; see WestPAC Statement of Org.

¹⁰ Compl. at 2-3 (Aug. 29, 2013).

¹¹ *Id.*

¹² *Id.* at 2.

1 the Act's proscription of federal candidates and their committees receiving, directing, or
2 spending funds that are not subject to the contribution limits and source prohibitions of the Act in
3 connection with a federal election.¹³

4 The Responses reject that contention. According to the Pearce Committee, in early
5 January 2013, Heffley informed the Pearce Committee that he was creating WestPAC and
6 solicited a \$10,000 contribution.¹⁴ For its part, WestPAC claims that, before it solicited the
7 Pearce Committee, it had received commitments from members of its Board of Directors and
8 Advisory Board to contribute in excess of \$100,000 and had proposed a budget in excess of \$1
9 million.¹⁵ As such, Respondents assert that they did not believe that the Pearce Committee's
10 \$10,000 contribution would serve as "seed money" or even a significant portion of WestPAC's
11 overall receipts.¹⁶ Despite those expectations, WestPAC did not receive any additional initial
12 funding from its Board members.¹⁷ Respondents further argue that WestPAC refunded the
13 Pearce Committee's contribution on September 2, 2013, and that WestPAC's only disbursements
14 before doing so involved payments for accounting and legal services.¹⁸

¹³ *Id.* at 4-5; *see* 52 U.S.C. § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1)); 11 C.F.R. § 300.61.

¹⁴ Committee Resp. at 2-3; Aff. of Dan N. Hazelwood ¶ 6 (Oct. 25, 2013) (attachment to Committee Response).

¹⁵ WestPAC Resp. 2-3; Committee Resp. at 2-3.

¹⁶ WestPAC Resp. 2-3; Committee Resp. 2-3. For example, the Committee's general consultant provided a sworn affidavit relating in part that, when the Committee made its contribution, he "was unaware, and had no reason to believe, that the contribution would be the first contribution received by GOAL WestPAC. Upon reviewing my records, I specifically recollect being told that Jason Heffley indicated that the PAC received early pledges equaling \$100,000, to be collected within a short amount of time. I was under the belief that 'short amount of time' meant the pledges would be collected within weeks." Hazelwood Aff. ¶ 8.

¹⁷ WestPAC Resp. at 3; Committee Resp. at 2-3.

¹⁸ Committee Resp. at 2-3. In its 2013 Mid-Year Report, WestPAC reported that it received \$10,000 from the Committee on January 17, 2013, and a \$5,000 contribution from another entity on February 28, 2013. WestPAC 2013 Mid-Year Report at 6-7 (July 15, 2013). During this period, WestPAC reported disbursements of \$1,614.76 to File Right for accounting services and \$2,604.62 to Gober Hilgers PLLC and \$10,000 to Jason Heffley for legal consulting services. *Id.* In its 2013 Year-End Report, WestPAC reported an additional \$55,944.12 in contributions

1 Furthermore, the Committee explains that Philip Pearce's "position and job description
2 with People for Pearce is ministerial and limited to maintaining financial records, and does not
3 involve making decisions pertaining to the committee's strategy, fundraising or
4 communications."¹⁹ WestPAC claims that Phillip Pearce "was hired to provide FEC reporting
5 and accounting services for WestPAC and does not serve on [WestPAC's] Board of Directors or
6 Advisory Board, does not have the authority to participate in the governance of WestPAC, and
7 does not have the ability to hire and fire employees of [WestPAC]."²⁰

8 III. ANALYSIS

9 The Act provides that an entity "directly or indirectly established, financed, maintained or
10 controlled" by a federal candidate or officeholder may not "solicit, receive, direct, transfer, or
11 spend funds in connection with an election for Federal office" or "any election other than an
12 election for Federal office," unless those funds comply with the Act's contribution limitations
13 and source prohibitions.²¹

14 The Commission's implementing regulations identify ten non-exhaustive factors to
15 consider in determining whether a federal candidate or officeholder directly or indirectly
16 "established, financed, maintained or controlled" an entity under § 30125(e).²² These factors —
17 which include, among others, whether the candidate or officeholder (i) shared common officers
18 or employees (or former employees) with the entity in a way indicative of "a formal or ongoing

from other individuals, corporations, and political action committees, as well as its refund of the \$10,000
contribution from the Committee on September 2, 2013. WestPAC 2013 Year-End Report at 3, 15 (Jan. 29, 2014).

¹⁹ Committee Resp. at 4.

²⁰ WestPAC Resp. at 4-5.

²¹ 52 U.S.C. § 30125(e)(1) (formerly 2 U.S.C. § 441i(e)(1)).

²² See 11 C.F.R. § 300.2(c).

1 relationship between the sponsor and the entity,” (ii) provided funds in a significant amount or
2 on an ongoing basis to the entity, or (iii) engaged in an active or significant role in the formation
3 of the entity²³ — “must be examined in the context of the overall relationship between the
4 [alleged] sponsor and the entity.”²⁴

5 Regardless, under the circumstances present here, the Commission concludes that further
6 enforcement action would be an inefficient use of agency resources. Dismissal of this matter is
7 appropriate given the relatively low dollar amount at issue, the fact that WestPAC refunded the
8 \$10,000 contribution to the Pearce Committee before the filing of the Complaint in this matter,
9 and the fact that WestPAC only spent the funds on non-substantive administrative expenses
10 before refunding it. Accordingly, the Commission exercises its prosecutorial discretion to
11 dismiss the allegations that Representative Stevan Pearce, People for Pearce and James Francis
12 in his official capacity as treasurer, and GOAL WestPAC and Philip G. Pearce in his official
13 capacity as treasurer, violated 52 U.S.C. §§ 30116(a)(1), 30116(f) and 30125(e) (formerly 2
14 U.S.C. §§ 441a(a)(1), 441a(f), and 441i(e)).²⁵

²³ See 11 C.F.R. § 300.2(c)(2).

²⁴ *Id.*

²⁵ See *Heckler*, 470 U.S. at 821.